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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 AMERICAN STOCK TRANSFER &
4 TRUST COMPANY, LLC.,

Plaintiff,

v.

15 CV 8725 (GBD)

6 SANOFI,

7 Defendant.

8 -----x

9 New York, N.Y.
10 March 16, 2017
9:45 a.m.

11 Before:

12 HON. GEORGE B. DANIELS,

13 District Judge

14 APPEARANCES

15 CAHILL GORDON & REINDEL, LLP
Attorneys for Plaintiff UMB Bank, N.A., as Trustee
16 BY: BRENT L. ANDRUS
CHARLES A. GILMAN
17 MICHAEL B. WEISS

18 WEIL, GOTSHAL & MANGES, LLP
Attorneys for Defendant Sanofi
19 BY: JOHN A. NEUWIRTH
JOSHUA S. AMSEL
20 STEFANIA DI TROLIO VENEZIA

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(Case called; in open court)

THE COURT: Good morning.

Let me turn to plaintiff first. With regard to the issues raised by the letters, if you simply intend to bring the same claims, which are based on a violation of the CVR agreement for failure to meet a milestone that it is most appropriate to move to amend this complaint to add this as another ground for such a violation.

I don't know what the parties' position are as to whether or not this should be a separate lawsuit or whether you should move to amend that this is simply just another ground for your allegations that the defendant has violated the CVR agreement basically in the same manner but not to the milestone with regard to the drugs and that you would bring basically the same counts with regard to your new anticipated claim.

THE COURT: Is there some reason why this should be a separate lawsuit?

MR. GILMAN: Your Honor, a bit of background. The CVRs, the contingent value rights, are securities. They are actively treated on the NASDAQ. They were issued to bridge a valuation gap between the buyer, Sanofi, and the seller Gemzyme, when they were negotiating a 20-plus-billion-dollar merger. There are two separate and distinct event driven triggers for payment.

THE COURT: I understand. You are suing under the

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1 same CVR agreement.

2 MR. GILMAN: You are absolutely correct.

3 THE COURT: Let me make sure I have it. I don't want
4 to go through all the background. I know most of it. I don't
5 have any problems with you at this point at least moving to
6 bring these claims in a separate lawsuit or in this lawsuit. I
7 am just trying to figure out whether your claim is going to be
8 a claim for violation of the CVR agreement, the same agreement
9 that is at issue here that, that your claim is going to be then
10 violated because they failed to meet a milestone, and the
11 nature of the counts that you intend to bring are the same kind
12 of counts that were already brought.

13 MR. GILMAN: The reason that we thought of doing it
14 separately, but we have no difficulty at all doing it
15 separately and coordinated before your Honor. It is that there
16 are different drugs involved in this milestones complaint that
17 we're talking about filing.

18 THE COURT: It would still be a violation of the CVR
19 agreement --

20 MR. GILMAN: You are right.

21 THE COURT: -- based on the failure to meet a
22 milestones and you would still bring the exact same count.

23 MR. GILMAN: Well, for different misconduct, your
24 Honor.

25 THE COURT: If you have a breach of contract claim and

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1 you claim that I breached the contract in two different ways,
2 you wouldn't bring two different lawsuits.

3 MR. GILMAN: Your Honor, we would be pleased to do it
4 by amendment if the Court would prefer.

5 THE COURT: I am trying to figure out what your
6 disagreement is.

7 MR. GILMAN: I don't know that there is a disagreement
8 on that, your Honor. Counsel for Sanofi had no problem in our
9 bringing the action. They just wanted it assigned to your
10 Honor, and we have no problem with that either. The drugs are
11 different. The standard of conduct is different. The
12 misconduct is different. We think largely the witnesses will
13 be different.

14 THE COURT: How is the standard of conduct different?

15 MR. GILMAN: Under the Lemtrada claims, which are the
16 ones your Honor has been focusing on, Sanofi has an obligation
17 to exercise diligent efforts in the approval with the FDA, the
18 development and commercialization. The sales.

19 THE COURT: I understand that.

20 MR. GILMAN: In the case we're talking about now
21 dealing with two different drugs -- Cerezyme and Fabrazyme --
22 it is not approval at all. It is not sales at all. It is
23 manufacture. These were two products that had trouble being
24 manufactured because of some cleanliness issues in a facility
25 in Massachusetts.

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1 THE COURT: Those obligations come out of the same
2 CVR.

3 MR. GILMAN: Same contract, your Honor.

4 THE COURT: And it would still be a breach of the same
5 agreement.

6 MR. GILMAN: Correct.

7 THE COURT: Look, if you agree you want to do it one
8 way or another, I am not going to stand in your way. I just
9 want to know.

10 Defendant, do you think it should be the same
11 complaint or separate lawsuit?

12 MR. NEUWIRTH: We have no objection to it being in the
13 same complaint.

14 THE COURT: Does anyone have a preference?

15 MR. NEUWIRTH: From the standpoint of whether it is
16 related or not, I don't want to take the Court's time. We set
17 that out in our letter. We clearly think it is related. Same
18 contract. Same contract provision. Same parties. Many of the
19 same witnesses. From an expense and efficiency standpoint,
20 there is no question these claims are related.

21 THE COURT: Does either one have a preference? My
22 slight preference is for you moving to amend because then I can
23 give them an opportunity if they want to oppose the amendment
24 that they can tell me that they are opposing the amendment and
25 on what grounds. Rather than getting a separate lawsuit and

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1 then get a motion to dismiss with regard to the separate
2 lawsuit. I don't want to spin my wheels.

3 MR. NEUWIRTH: Your Honor, it sounds like it is a
4 claim for breach of our commercially reasonable efforts to meet
5 the production milestones, very similar to the claim that is
6 already in the case with respect to the approval of sale
7 milestones. We Would suggest that plaintiffs file a motion to
8 amend. We'll take a look at it quickly and I suspect that
9 we'll be able to consent. We haven't seen it yet. I think it
10 should be in this case as an amended claim, and we're not going
11 to object for the sake of objecting.

12 THE COURT: The most efficient way for me to do it is
13 by letter application after you give them a copy of the
14 complaint, that you submit the proposed amended complaint, and
15 they can respond by letter if they have some grounds to object.
16 If they don't have grounds to object, then I am going to accept
17 it. If they have grounds to object, then I am going to either
18 review those right away and either grant your letter
19 application to file the amendment, or I will bring you in and
20 discuss it immediately and then I will determine whether or not
21 I will allow you to amend it in that regard.

22 I don't want to go through another round of motions to
23 dismiss. It is either going to be a complaint that on its face
24 not just consistent with my prior rulings in this case but
25 consistent with obviously your own independent obligation to

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1 allege a sufficient cause of action, that as long as they have
2 no articulable objection or the nature of the objection is
3 clearly already addressed by this Court and you can obviously
4 anticipate on a similar ground even though they may have had a
5 basis to dismiss. If I have rejected that ground, then you can
6 assume I am going to reject that ground unless you can
7 articulate why this is a different application. If you want to
8 reserve your right to object, you can. If I have already ruled
9 on that basis, then you can anticipate I am not going to
10 entertain that as a serious objection.

11 MR. NEUWIRTH: So I understand, your Honor, it sounds
12 like you would prefer us not to make a motion to dismiss where
13 we have already gotten guidance from the Court based on the
14 Court's prior ruling. You are not foreclosing us from doing so
15 if we have an independent basis to do so. I am not suggesting
16 that we will.

17 THE COURT: I am not precluding you from opposing
18 their application to amend in that regard. I don't want a
19 motion to dismiss. I want your opposition to their amendment
20 and tell me why you oppose it. If there is such an opposition,
21 I can address it. What I don't want is to have them file the
22 motion and in 30 days from now I get another motion to dismiss
23 and then we're going through it for the next three months,
24 another series of motions on essentially the same breach of
25 contact.

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1 MR. NEUWIRTH: I think that should be fine, your
2 Honor. There are different standards obviously on a motion for
3 leave to amend and a motion to dismiss; but I think we should
4 be able to work through it.

5 THE COURT: I think the appropriate standard at this
6 point is on a motion to amend. If they want to amend it in
7 that regard and you see that amendment is futile or
8 inappropriate in some way, let me know. I assume that it
9 depends on how fancy they get and the amendment saying you
10 violated the same agreement because you didn't meet certain
11 obligations. Those obligations are spelled out in the
12 agreement and this is what we allege you didn't do that you had
13 an obligation to do in this contract. You should proceed that
14 way.

15 How soon can you get them a copy and get me a copy? I
16 want them to have a copy before I have one.

17 MR. GILMAN: Monday.

18 I follow Judge Forrest's rule: Never serve anything
19 on an adversary on a Friday if you can avoid it.

20 THE COURT: You should file your papers on a Monday.

21 MR. GILMAN: Thank you.

22 THE COURT: Don't make everybody work over the
23 weekend. Give it to them early. And then at least give it a
24 day or two that they have it in their hand. At least you know
25 they have it before I get it.

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1 How quickly will you respond?

2 MR. NEUWIRTH: I am trying to think through. I
3 haven't seen it, your Honor, so it is a little tricky.

4 THE COURT: Well, let's guess what it is going to be
5 about.

6 MR. GILMAN: They did not move to dismiss.

7 THE COURT: Unless you see a surprise.

8 MR. GILMAN: They did not move to dismiss Count One of
9 the original complaint, which was the breach of contract. This
10 is not going to be anything that you will move to dismiss I
11 don't believe or oppose.

12 MR. NEUWIRTH: Your Honor, I would ask for just -- if
13 we can do it sooner, we will -- two weeks.

14 THE COURT: All right.

15 MR. NEUWIRTH: Thank you.

16 THE COURT: Give me a copy early next week. You give
17 me a copy before the end of the week.

18 Why don't you tell me whether or not you are opposing
19 the amendment on or before the 24th of March.

20 MR. NEUWIRTH: Thank you, your Honor.

21 THE COURT: Sorry, no.

22 31st of March.

23 MR. GILMAN: Your Honor, how about if they let us know
24 sooner if they are not going to oppose, so we don't burn more
25 time. If they are going to oppose, they have until the 24th or

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1 whatever the date.

2 THE COURT: As soon as you can. Obviously if you look
3 at it and right away you know you are not going to oppose --

4 MR. NEUWIRTH: If we know that right away, like I said
5 we'll let you know sooner rather than later. Otherwise, we
6 have until the 31st.

7 THE COURT: That is what I will anticipate.

8 With regard to the other two issues, this is what
9 we're going to do for now: With regard to the plaintiff's
10 demand for books and records, at this point particularly in
11 light of this process, I am not going to order anything other
12 than the appropriate discovery in this case at this point.
13 That should get you 90 percent of what you want rather than
14 some detailed examination of the books and records, which is
15 what is your ultimate claim. So I don't see any reason to
16 issue any other order other than you file your amended
17 complaint, you make your demands for discovery. And the
18 appropriate demands for discovery is what is appropriate for me
19 to order at this point rather than the ultimate relief that you
20 are requesting.

21 If you think that there is something that is not
22 discoverable during this litigation and somehow you should be
23 entitled to before you win this case, then you can let me know.
24 I cannot imagine if the abstract what it is that you think you
25 will get other than getting your numbers crunched or having

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1 lawyers go bit by bit through the records at this point.

2 MR. GILMAN: If I may address that.

3 THE COURT: Yes.

4 MR. GILMAN: In your Honor's opinion dealing with the
5 motion to dismiss, September 8, 2016 opinion, in Footnote No. 9
6 your Honor may recall that you found that the out milestones --
7 we're talking about the Lemtrada milestones for product sales,
8 Milestones 2, 3, 4, which did not have a payment date which had
9 yet come due, were not ripe.

10 THE COURT: Right.

11 MR. GILMAN: Those claims are not in the case and
12 counsel is not providing any discovery relating to ongoing
13 efforts.

14 THE COURT: If they are not in the case, then it is
15 not my issue.

16 MR. GILMAN: No, no, but that is why the trustee has
17 an absolute right.

18 THE COURT: You said it is not in the case. You
19 cannot just walk in and say, Judge Daniels, do me a favor and
20 force my right. If it is part of this case, then I will make
21 sure in this litigation you get informed. To simply say on the
22 side that it is not part of this case but I want you to order
23 them to do something, that is not appropriate.

24 MR. GILMAN: If I may finish.

25 There are two aspects that we're looking at. One is

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1 the right of examination of books be records. The other is the
2 right of independent audit. They produced product sales
3 statements. The contract requires them -- the contract before
4 this Court -- to produce product sales statement. We have an
5 absolute right to designate an agreed independent auditor to
6 audit those statements. Those are the statements that say
7 whether or not milestones --

8 THE COURT: Have you requested that relief in your
9 complaint?

10 MR. GILMAN: Yes. We amended the complaint in Counts
11 Five and Six are before your Honor. Counts Five and Six are
12 that they are refusing to allow us to audit the key statements
13 that we have a right to audit.

14 And, your Honor, on production Milestones 2, 3 and 4
15 we have a right -- Learned Hand speaking for this Court --

16 THE COURT: I am not interested in Learned Hand right
17 now. I am trying to get practical with what we're going to do.
18 I understand the legal obligations. I am trying to figure out
19 what it is that you think you are entitled to with regard to
20 that relief that is different than what you think you are going
21 to get or entitled to with regard to discovery.

22 MR. GILMAN: Discovery does not give us a national
23 accounting firm to audit the product sales statement. The
24 contract before your Honor Claims Six in the contract --

25 THE COURT: Until you win on that claim, I am not

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1 going to give you that ultimate relief. Right now I am going
2 to give you appropriate discovery with regard to the claims
3 that you have brought. Unless they have a different position
4 and they agree with you. Right now whatever you are entitled
5 to with regard to discovery, that is all I am going to order at
6 this point in time at this point in this litigation.

7 MR. GILMAN: The enforcement of the contract is before
8 the Court.

9 THE COURT: Right. That is your ultimate relief.

10 MR. GILMAN: The audit is not ultimate relief. The
11 audit is the right to test. It cannot be that Sanofi can
12 produce numbers and we are obligated to take them at face
13 value. That cannot be.

14 THE COURT: With regard to the dispute between them,
15 you are entitled to demand what you think is relevant to
16 proving your case --

17 MR. GILMAN: And we have.

18 THE COURT: -- in discovery.

19 If it is discoverable in discovery, that is what I am
20 going to order now. If it is not appropriate discovery in this
21 litigation, I am not going to give you further relief with
22 regard to audits in the middle of this litigation. If you
23 think you are entitled to some information with regard to
24 discovery, then you demand that information as a party in
25 discovery and be in a position to argue that you are demanding

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1 that because that is appropriate discovery in this litigation.

2 MR. GILMAN: We have and it has been refused.

3 THE COURT: You should come to the Court and ask the
4 Court to compel them to comply with your discovery requests.
5 That is the orderly process to deal with those issues while
6 this case is being litigated. So if you appropriately demanded
7 discovery that you say that you would be not independently
8 entitled to because I am not here to do that. I am here to
9 give you right now what you are entitled to in order to prevail
10 on your ultimate claims in order to be able to prove your case.
11 If you have articulated that you need certain things and that
12 you can articulate why that is appropriate discovery to have in
13 this litigation that will further your case and further your
14 claims, then you request that from them. And if they refuse,
15 then you come to the Court and you say you appropriately asked
16 them for this as discovery. It is appropriate discovery.
17 We're legally entitled to it as a party to a litigation, not
18 independently entitled to it but as a party to litigation, and,
19 Judge, you should enforce that discovery request; if they
20 refuse and you convince me that you are entitled to it as a
21 party while this litigation is going on, then I will tell them
22 that they must respond as a party in litigation to that
23 discovery request if it is an appropriate discovery request.
24 Whether you are entitled to an audit independent of this
25 litigation, I am not going to get involved.

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1 MR. GILMAN: The right to an audit is in this
2 litigation. It is Count Six of the complaint.

3 THE COURT: But that is your ultimate relief that you
4 are asking for. You say you will prevail in this case because
5 you have a right to an audit. You want to prove that, you want
6 to prove that earlier, you want to do that discovery upfront,
7 and then give me summary judgment motion, you can do whatever
8 you want to do. I am not here to advise you how to proceed. I
9 am just going to tell you how I am going to react. I am not
10 going to pick a count to give you your relief at this stage of
11 the proceeding.

12 You want to fully establish that you are entitled to
13 it and that that issue is resolved in this litigation, then you
14 will get the ultimate relief that you asked for; but right now
15 I am not going to order the audit simply because it is the
16 ultimate relief you are asking. I am not going to order
17 anything other than what you would be entitled to in discovery
18 as a party to support that or any other claim.

19 MR. GILMAN: The contract says that if you allow three
20 years to go by without requesting and doing an audit on the
21 product sales -- this is not an audit of Sanofi. This is an
22 audit of a single sheet of paper. That's what it is about.

23 THE COURT: I understand.

24 MR. GILMAN: If we don't do the audit, the contract
25 says their number because "conclusive." So we're trying to do

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1 an audit to see whether the numbers they are producing are
2 supported.

3 THE COURT: I cannot imagine that they will prevail on
4 that argument if you demand the audit and they refuse and you
5 are legally entitled to it.

6 MR. GILMAN: We have demanded it.

7 THE COURT: Then I doubt that they will prevail on
8 that argument that you somehow waived your right. I don't know
9 how clearer than I can be what I am going to order right now.
10 Right now I am not going to order the ultimate relief that you
11 say you are asking for in your complaint that you would be
12 entitled to if you proved your case. That is what it is. This
13 is not interim relief. This is not an injunction that you are
14 asking me for.

15 As I say, if you can think of something that you think
16 that you need now or that would advance this lawsuit, then ask
17 for it in discovery. If you are entitled to it as a part any
18 discovery and they don't have a legitimate reason to make an
19 argument that you are not entitled to it at this point in this
20 litigation as to further this litigation, then I will order
21 them to produce it. Unless you two can come to some other
22 understanding how you are going to deal with it, the record is
23 clear that you demanded the audit and they have refused. Now,
24 what the consequences of that are for you or them that is what
25 this litigation is about. That is why it is a claim.

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1 MR. GILMAN: Hypothetically, your Honor, if the audit
2 demonstrated that one of the milestones in fact had been met
3 despite Sanofi's statements to the contrary, that rolls into
4 every other count in the complaint. It is not ultimate relief,
5 your Honor. It is the interim building of what the true facts
6 are, not what they are saying, but what is verified by an
7 independent accountant. Again, it is not a full-blown audit of
8 the company. It is a very discrete thing. It is a matter of
9 absolute right. It is not discretion.

10 THE COURT: I understand your argument. My position
11 is still the same.

12 MR. GILMAN: Okay.

13 THE COURT: You want it, you demand it as a discovery
14 request in this litigation. I am only going to order any
15 relief at this point, the relief that I will order is what you
16 would be entitled to as a party in litigation. I don't know if
17 you think you will get 90 percent of what you want or
18 50 percent of what you want. You made your demand. They
19 responded to it. If you think that they responded to it
20 inappropriately by refusing a legitimate discovery request that
21 you would be entitled to in this litigation, then tell me. If
22 you convince me, I will tell them to give you -- open their
23 books and records and give you to whatever else you think you
24 would be entitled to to prove your case. I am not going to
25 give you any further relief in that regard at this point.

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1 Is there anything helpful that you want to add at this
2 point?

3 MR. NEUWIRTH: No, your Honor.

4 THE COURT: Obviously both parties know the nature of
5 the information that would put this issue to rest. If you
6 think that they have information that indicates that they did
7 or didn't meet the milestone, I assume you requested it. If
8 they think they have information that indicates that they did
9 or didn't meet the milestones, I assume they are going to
10 produce it. Make your discovery demand and see what is
11 appropriate discovery in this litigation.

12 As I have given you an opportunity to combine the two
13 cases rather than make it separate cases, that broadens the
14 demand because you are obviously entitled to discovery with
15 regard to both or all of the drugs.

16 MR. GILMAN: That's fine. The audit was to expedite
17 and facilitate the trial of this case because the results of
18 the independent auditor will be binding on the parties as
19 opposed to if he argues and I argue. We'll do it the other way
20 and obviously abide by your Honor's ruling.

21 THE COURT: So move forward with relevant discovery
22 requests that are appropriate to the claims. That is basically
23 my position.

24 MR. GILMAN: Your Honor, counsel for Sanofi pointed
25 out that coming here today we don't have a raft of discovery

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1 motions. There are none pending before your Honor, because I
2 personally was trying to avoid the need for judicial
3 intervention.

4 We're beyond that. They have not produced any
5 documents on their European servers. They have refused to
6 produce and haven't produced by delays any documents on Count
7 Two of the complaint.

8 What they produced and they talk about is 11 million
9 pages of documents. 90 percent of that 11 million pages was
10 wrong and they had to redo it. We have gotten virtually
11 nothing from them.

12 THE COURT: I can deal with that very simply. Any
13 outstanding discovery requests they should fully respond to and
14 produce the documents that are appropriate within 30 days of my
15 allowing you to amend the complaint.

16 MR. GILMAN: Thank you, your Honor.

17 THE COURT: I want those responses. If there is some
18 reason why certain things that cannot be produced within 30
19 days, they should discuss it with you and tell you why they
20 cannot do it in 30 days and convince you that they need more
21 than 30 days. Otherwise, it should all be responded to and
22 produced appropriately within 30 days of my accepting the
23 amended complaint.

24 MR. GILMAN: They have had these demands for one year.

25 MR. NEUWIRTH: Your Honor --

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1 THE COURT: Well, they have 30 more days. I assume
2 you are going to make additional demands with regard to the new
3 claim?

4 MR. GILMAN: Certainly.

5 THE COURT: So it is going to be within 30 days of
6 receiving the complaint and within 30 days of whatever further
7 demands you think are appropriate to make with regard to the
8 new claim.

9 MR. GILMAN: Thank you.

10 MR. NEUWIRTH: Your Honor, if I may. Counsel knows
11 fully well that there are no way to complete the discovery in
12 this case given the size of it 30 days from when they file
13 their amended complaint.

14 THE COURT: Well, nobody said you have to complete
15 discovery in this case.

16 MR. NEUWIRTH: The document --

17 THE COURT: What you have to do is respond to their
18 outstanding discovery requests. A response.

19 MR. NEUWIRTH: Okay.

20 THE COURT: To the extent that your appropriate
21 response is to produce documents, you should produce those
22 documents either within that period of time or tell them what
23 reasonable period of time that you will be able to produce
24 those documents. If there is a disagreement whether that is a
25 reasonable period of type, it will be addressed by the Court.

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1 If you come to an agreement that you will have it within 45 on
2 a certain issue rather than 30 days because there is some
3 reasonable basis that it is really going to take you that long;
4 but otherwise you have the discovery request, get your people
5 working on it and be ready to respond to that request. I said
6 within 30 days of my accepting the amended complaint. So you
7 have plenty of time to start working on it.

8 MR. NEUWIRTH: Your Honor, there is a lot of history
9 left out of that recitation. I don't want to bore the Court.

10 THE COURT: I don't want to be bored.

11 MR. NEUWIRTH: There were stays of discovery and all
12 sorts of things happening and there was a period of absolute
13 quiet from plaintiffs side from us. Counsel here has been on
14 the scene for three months. We will certainly respond to the
15 discovery requests to the extent they need to be responded to
16 in writing within your Honor's time frame that you just set
17 out. Counsel knows that when it comes to completing the actual
18 production of documents, that that is going to take longer.
19 The parties have been negotiating that and we're very close --
20 or at least we were as of two weeks ago on a potential schedule
21 submitted to the Court -- and I suspect when we sit down to
22 talk, we'll come to an agreement.

23 THE COURT: What I am going to do is I want you to
24 agree upon a new scheduling order, a new case management plan
25 within 30 days and submit it to this Court.

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1 MR. NEUWIRTH: That's fine.

2 THE COURT: I expect you to confer within 14 days of
3 today and I expect a new scheduling order within 30 days.

4 MR. NEUWIRTH: That's fine.

5 MR. GILMAN: Fine.

6 THE COURT: Finally, with regard to a special master,
7 I am not appointing a special master. If there is substantive
8 disputes that arise, I will either consider addressing them
9 myself or consider sending them to the magistrate judge. At
10 this point I see no need to appoint a special master.

11 Frankly, neither side has given me any complex issue
12 that needs someone else's help other than your own to solve
13 these problems. These are not complicated issues. Those are
14 the deadlines. That is what I expect. That is what you should
15 expect. Use that as your guidance and move forward. As soon
16 as you hit a roadblock, you let me know. As I say, if it is a
17 genuine dispute, if you asked the other side for X and they
18 have refused, I expect you to make your demand, and I expect
19 the other side to respond to those promptly, and I expect the
20 response to be: Here it is, I will produce it within this
21 reasonable amount of time, I am not going to produce it because
22 I don't think you are entitled to it, or I don't have it.
23 Those are the responses.

24 MR. NEUWIRTH: Thank you, your Honor.

25 THE COURT: If you are not going to refuse to produce

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1 documents, I want the other side to know what the reasonable
2 time that they can expect to receive those documents. I expect
3 them to be within 30 days, unless you come to some other
4 agreement, or you believe that the other side is being
5 unreasonable about the time period and you can let me know. If
6 you propose separately, then I can decide by letter whether or
7 not to move forward.

8 MR. GILMAN: One closing note. On February 28th,
9 2017, two clinical trials came in on Lemtrada. It is the
10 closest thing to a cure of remitting multiple sclerosis as
11 there is anywhere. Your Honor, the studies --

12 THE COURT: That sounds nice. What do you want me to
13 do about it? I am the lawyer; not the doctor.

14 MR. GILMAN: This litigation is fundamentally
15 important --

16 THE COURT: All litigation is important.

17 MR. GILMAN: -- for a host of reasons.

18 THE COURT: Is there something you want me to do to
19 make it more important?

20 MR. GILMAN: No, your Honor.

21 THE COURT: Let's save the speeches and get to work
22 and let's move forward and move forward efficiently. If you
23 think this case should be moving forward more expeditiously
24 than it is, you tell me what you suggest and I will consider
25 it. I think I put you on a schedule that is reasonable to get

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1 it done. It saves you time rather than to add time to this
2 litigation in comparison to what you originally asked for.

3 Get the amended complaint in. As soon as I get it, I
4 will review it. If they don't oppose it, then I want to know
5 right away and you'll be able to move forward.

6 If you have responses within 30 days to your
7 outstanding requests, you can make a further request and you
8 tell me what is a reasonable schedule. The thing is that
9 rather than have any problems from you, I would like to have
10 the solutions. Spend more time speaking to each other. If you
11 propose a reasonable solution, I will accept it. If I have
12 impose one on you, one of you is not going to be happy. You
13 know what my approach is. Don't do what you want to do. Do
14 what you think I would do. Let's move forward.

15 I will schedule a conference within 60 days. If you
16 have some issues, we'll meet them. If you don't have issues,
17 we have a scheduling order and an amended complaint and you are
18 moving forward with discovery, we can adjourn it to another
19 date beyond that.

20 I am going to set it down for May 18th.

21 MR. NEUWIRTH: May?

22 THE COURT: May 18th at 9:45. If we don't need to
23 meet on that day, we'll postpone. I think that you should be
24 able to solve most of your issues with that guidance.

25 Anything else we need to addressed today?

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MR. GILMAN: No, your Honor.

THE COURT: Anything further?

MR. NEUWIRTH: No, your Honor.

THE COURT: See you May 18th unless I hear from you.

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